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Missing persons

Report of the Secretary-General

Summary

In its resolution 63/183, on missing persons, the General Assembly requested the Secretary-General to bring the resolution to the attention of all Governments, competent United Nations bodies, specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to submit a comprehensive report on the implementation of the resolution, including relevant recommendations, to the Human Rights Council at its relevant session and to the Assembly at its sixty-fifth session. The present report has been prepared in accordance with resolution 63/183.

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I. Introduction

1. The General Assembly, in its resolution 63/183, noted that the issue of persons reported missing in connection with international armed conflict, in particular those who are victims of serious violations of international humanitarian law and human rights law, continues to have a negative impact on efforts to put an end to those conflicts, rebuild affected societies and causes suffering to the families of missing persons, and stressed in that regard the need to address the issue from a humanitarian perspective and rule of law perspective, among others. The Assembly urged States strictly to observe and respect and ensure respect for the rules of international humanitarian law, as set out in the Geneva Conventions of 12 August 1949 and in the Protocols Additional thereto of 1977.

2. The General Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict, to account for persons reported missing as a result of such a situation and to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict. It also reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts and the duty of each party to an armed conflict, as soon as circumstances permit and, at the latest, from the end of active hostilities to search for the persons who have been reported missing by an adverse party.

3. In paragraphs 10 and 11 of the resolution, the General Assembly also urged the States to enhance their efforts to determine the fate of the missing persons and adopt legal mechanisms to address the needs of the relatives of the missing and recommended that the issue of missing persons be included in the post-conflict reconstruction process, in accordance to the rule of law and justice mechanisms.

4. The General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families. It invited States that are parties to an armed conflict to cooperate fully with the International Committee of the Red Cross (ICRC) in establishing the fate of missing persons and to adopt a comprehensive approach to the issue, including all such legal and practical measures and coordination mechanisms as may be necessary, based on humanitarian considerations.

5. The General Assembly recognized the need for the collection, protection and management of data on missing persons according to international and national legal norms and standards and urged States to cooperate with each other and with other concerned actors working in this area, inter alia, by providing all relevant and appropriate information related to missing persons.

6. In response to a note verbale dated 8 April 2010, information was received from Afghanistan, Bahrain, Bosnia and Herzegovina, Colombia, Georgia, Greece, Iraq, Kazakhstan, Kyrgyzstan, Oman, Panama, Paraguay, the Russian Federation, Slovakia, Spain, the Syrian Arab Republic and Ukraine. Information was also received from the International Committee of the Red Cross, the International Commission on Missing Persons, and the Argentine Forensic Anthropology Team. The responses can be grouped under four general themes: measures to prevent persons from going missing; the right to know; developments in forensic sciences;

and the question of impunity. The four themes will be addressed in sections II to V below.

II. Measures to prevent persons from going missing

7. In its resolution 63/183, the General Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict and account for persons reported missing as a result of such a situation. Measures aiming at preventing persons from going missing include the adoption of laws and regulation and the use of means of identification by armed and security forces.

A. The adoption of laws and regulations

8. The development and promotion of national legislation, as outlined in resolutions adopted by international and intergovernmental organizations, remain essential in dealing with the issue of missing persons, preventing disappearances, ascertaining the fate of missing persons, ensuring the proper management of information and supporting the families of missing persons. As already mentioned in the previous report of the Secretary-General on missing persons (A/63/299), ICRC has prepared a model law on the basis of the Law of Missing Persons in Bosnia and Herzegovina, with an article-by-article commentary, to help States develop and adopt domestic legislation in that regard. The model law constitutes a framework, or a proposal for action, which can be adjusted for national needs; it can be used in whole or in part to develop or supplement existing internal legislation on various topics.

9. The ICRC model law contains eight chapters, covering a number of issues: definitions of terms such as "missing persons" and "relative of the missing" (under "general provisions"); basic rights and measures relating to persons deprived of their freedom and the right of their relatives to know; the legal status of missing persons and related rights; the tracing of missing persons; respect for the deceased; and criminal liability. In December 2009 ICRC and the Inter-Parliamentary Union jointly published *Missing Persons: a Handbook for Parliamentarians*, a tool that offers a comprehensive legal framework designed to help States and their competent national authorities to adopt or improve their national legislation on missing persons.

10. At the regional level and on the basis of the ICRC model law, a regional model law on missing persons was adopted in Saint Petersburg, Russian Federation, on 25 November 2008 by the 31st plenary session of the Inter-Parliamentary Assembly of the States of the Commonwealth of Independent States. At the national level, laws are being adopted with a view to preventing persons from going missing. In addition to the measures already mentioned in the previous report, Colombia adopted, in 2007, a national plan for the search of missing persons (Plan Nacional de Búsqueda), based on ICRC's recommendations. The International Commission on Missing Persons and the National Search Commission published an extensive report on the implementation and challenges for the plan in 2009.

11. ICRC is also conducting and supporting studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. Such studies have already been carried out in a number of countries, including Armenia, Azerbaijan, Georgia, Guatemala, Indonesia, the Republic of Moldova, the Russian Federation and Sri Lanka. In certain contexts, such as Armenia and Azerbaijan, national authorities have started to use the above-mentioned regional model law on missing persons adopted by the Inter-Parliamentary Assembly of the Commonwealth of Independent States as a basis to draft their own legal framework. In Nepal, the legislative committee of Parliament is drafting a forced disappearances bill. In Timor-Leste, following the recommendations made by the Commission for Reception, Truth and Reconciliation, the Parliament is working on the establishment of a legal framework for missing persons and the adoption of policies and measures to ensure their effective implementation.

12. The International Commission on Missing Persons, which advised on the aforementioned legislative efforts, with an emphasis on facilitating the establishment and development of domestic rule of law mechanisms on the issue, has developed practical methods for enabling Governments to meet their obligations, including policy frameworks, central records and data management systems, which it disseminates to them, in addition to providing technical assistance with field operations. To date, such technical assistance has led to the identification of a total of 18,000 missing persons using their DNA. The Commission maintains an extensive laboratory working on missing persons cases and is a global resource for assistance to countries confronted with this issue.

13. With regard to steps taken by States, Afghanistan reported that it has adopted a transitional justice programme under the national programme for peace, reconciliation and justice in order to address crimes committed in the past, part of which addresses cases of enforced disappearances. The Afghan Independent Human Rights Commission is responsible for the documentation of crimes and the collection of related information from all over the country.

14. On 2 November 2004, the President of Georgia issued Ordinance No. 479 on the establishment of the State commission for finding missing persons missing as a result of hostilities relating to the territorial integrity of Georgia and for the protection of the rights of their family members. In addition, on 29 March 2005, the President issued Ordinance No. 170 on the adoption of the statute of the Commission. Article 2 of the statute develops recommendations and proposals for the President of Georgia on the following issues: finding missing persons; protecting the rights of families of the missing persons and deciding on the broad scope of provisions for their social security; determining the fate of persons missing as a result of armed conflicts relating to the territorial integrity of Georgia; establishing contacts with international organizations; and undertaking joint measures, if required. The Government of Georgia, in accordance with the guiding principles elaborated by ICRC, aims to prevent persons from going missing, to provide aid in the search for and the tracing of missing persons in the context of armed conflict or internal violence and to protect the rights and interests of missing persons and their relatives. With a view to providing effective search and identification tools for the tracing of missing persons, modern methods in the field of forensic sciences, including the use of DNA, are widely used in Georgia.

15. In December 2007, Spain enacted Act No. 52/2007, hereinafter referred to as the Historical Memory Act, and subsequently developed a whole series of provisions deemed for its effective implementation. The Act recognizes and enhances the rights of persons who were subjected to persecution or violence during the civil war and the dictatorship and introduces measures on their behalf, and grants a number of rights to the relatives of persons who disappeared during the Spanish Civil War and the Franco dictatorship. For example, article 11 of the Act stipulates that public administrations shall, within their areas of jurisdiction, offer facilities, on request, to the direct descendants of victims who wish to investigate, trace and identify persons who disappeared under violent circumstances during the civil war or the subsequent era of political repression and whose whereabouts are unknown. The article also requires the General State Administration to draw up action plans and to introduce subsidies to defray the costs of such activities. Articles 12 to 14 provide for a further series of measures and tools to facilitate the task of persons who wish to trace and or identify missing persons.

B. The use of means of identification by armed and security forces

16. In time of conflict, the production and proper use of means of identification by armed and security forces play an important role in terms of preventing persons from going missing. In that regard, Governments have the main responsibility for the production and compulsory use by their armed forces of such items as identification tags.

17. In its resolution 63/183, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families. Means of personal identification for minors is of importance in terms of prevention, as they are particularly vulnerable in time of conflict, notably to forced recruitment. State authorities must, in that regard, take effective measures to provide means of personal identification to minors with a view to preventing their disappearance.

III. The right of families to know

18. In resolution 63/183, the General Assembly reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts and the need for the parties to an armed conflict to search for persons reported missing by an adverse party. It also called upon States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict and to provide family members with all relevant information they have on their fate.

19. The right to know extends beyond the conduct or immediate aftermath of hostilities. For example, case law has anchored the right to know in articles 2, 3 and 5 of the European Convention on Human Rights and Fundamental Freedoms.

A. Tracing

20. As underlined in resolution 63/183, effective measures must be taken to determine the identity and fate of persons reported missing. Both State authorities and armed groups bear this responsibility, which entails, first, a commitment to implementing international legal instruments, including the four Geneva Conventions and the Protocols Additional thereto, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including universal and regional human rights instruments such as the European Convention on Human Rights and Fundamental Freedoms. Such commitment can also be demonstrated through the signing and ratifying of the International Convention for the Protection of All Persons from Enforced Disappearance.

21. Concrete efforts in this regard include the tracing activities carried out by ICRC during armed conflicts and other situations of violence. Those activities include collecting information about people unaccounted for and the circumstances under which they disappeared from their families, direct witnesses, the authorities and any other reliable sources. The information is stored centrally and managed in accordance with laws on the protection of personal data. This information is fundamental when tracing missing persons and establishing what has happened to them. Such searches are undertaken in places of detention, camps for internally displaced persons and refugees, hospitals, morgues, cemeteries and burial grounds and remote areas. Tracing activities include supplying the authorities with lists of people unaccounted for, together with information on the circumstances under which they disappeared, requesting information on the location of graves and asking the authorities to allow for the recovery and identification of human remains. Updated lists of missing persons that have been reported to ICRC in a given context can be published, widely distributed among authorities and the public at large and used by all who are engaged in the tracing process. The process also involves maintaining a constant dialogue and making confidential representations to the authorities or armed groups in order to clarify the fate of missing persons.

22. Following the end of hostilities, the international community made intensive efforts in this respect through the International Commission on Missing Persons in Bosnia and Herzegovina, Croatia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, as well as in Iraq and Colombia. The International Commission on Missing Persons has been assisting Governments in recovering and identifying persons missing since 1996. Other humanitarian organizations involved in activities linked to restoring family links are the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). They are regular partners of the Red Cross and Red Crescent components. Other agencies, such as the United Nations Children's Fund (UNICEF) and non-governmental organizations such as Save the Children Fund, cooperate with the Red Cross and Red Crescent Movement in specific cases, for example, in assisting unaccompanied children.

23. It is to be noted that in 2008, in Baku, the Ministers of Internal Affairs of the countries members of the Commonwealth of Independent States signed an agreement for the purpose of implementing mutually beneficial cooperation and ensuring rapid response in the tracing of missing persons and the establishment of their whereabouts. Within the framework of the agreement, instructions for

organizing the inter-State tracing of missing persons were approved. The competent authorities of the Commonwealth of Independent States member countries are taking coordinated action pursuant to those instructions.

B. Mechanisms for clarifying the fate of missing persons

24. In order to be effective, tracing activities and efforts to locate and identify missing persons who are dead (that is, the vast majority of missing persons following violent conflicts today), the investigation of cases and the management of information require the establishment of mechanisms aimed at ensuring that parties face up to their obligations and provide the information needed to resolve cases of missing persons. In that regard, the General Assembly, in its resolution 63/183, recognized the need for the collection, protection and management of data on missing persons according to international and national legal norms and standards, and urged States to cooperate with each other and with other concerned actors working in that area, inter alia, by providing all relevant and appropriate information related to missing persons.

25. Such mechanisms, whose objectives include clarifying the fate of missing persons and supporting their families, already exist in some countries, including Argentina, Armenia, Azerbaijan, Colombia, Chile, Guatemala, Georgia, Iran (Islamic Republic of), Iraq, Japan and many others. However, the establishment of national information bureaux and grave registration services, as provided for in international humanitarian law, is recommended.

26. In Guatemala, ICRC pushed authorities for the creation of a national search committee, as outlined in a draft law that has been pending approval in Congress since 2007. The committee would be responsible for coordinating the Government's response on the issue, in cooperation with family associations and other civil society organizations, as well as for implementing a policy based on international standards to tend fully to the needs of affected families.

27. In 2004, Costa Rica created the Commission on International Humanitarian Law, with the objective of promoting peace and preventing conflict. Since March 2007, the issue of missing persons has been incorporated into the Commission's plan of action. The Commission plans to carry out an analysis of the existing legal framework with a view to proposing, in the medium-term, improved mechanisms to prevent persons from going missing, and to respond to potential cases of missing persons in the country.

28. The Missing Persons Institute was established in Bosnia and Herzegovina in 2005 on the basis of an international agreement between the International Commission on Missing Persons and the Government. Its purpose is to provide the country with a sustainable national mechanism to address all aspects related to the issue of missing persons resulting from the conflict in the former Yugoslavia. The Institute also ensures that mass grave sites are protected, catalogued and properly excavated and that relatives of the missing are able to participate in the search process. One of the major tasks of the Institute is also to establish a unified central record of those who went missing during the conflict. A central record office will include all records kept by entity agencies and institutions, associations of families of the missing and by the International Commission on Missing Persons, ICRC and other organizations. The central list will be subject to a rigorous verification process

to ensure its accuracy and prevent the manipulation for political purposes of the numbers of missing persons. The Institute will use the database developed by the International Commission on Missing Persons, which has become a model for other Governments, as the basis for the creation of its central records. Through assistance provided by the International Commission, over 15,500 persons have been identified in the western Balkans, of which over 13,000 are of relevance to Bosnia and Herzegovina. In this regard, 15 years following the cessation of hostilities, Bosnia and Herzegovina has accounted for over two thirds of those missing as a result of armed conflict, crimes against humanity and violations of human rights.

29. In 2006, with the assistance of the International Commission on Missing Persons, the Government of Kosovo created a Commission on Missing Persons, based upon the model of the Missing Persons Institute in Bosnia and Herzegovina. Its mandate is to search for persons missing as a result of the conflict, regardless of national, ethnic or religious origins. In Kosovo, the Working Group on Missing Persons, comprised of Belgrade and Pristina delegations, chaired by ICRC, meets regularly. The effort to locate and identify Kosovo's missing persons has been a complicated process and has been carried out primarily by the United Nations Interim Administration Mission in Kosovo (UNMIK) and now European Union Rule of Law Mission in Kosovo in cooperation with the International Commission on Missing Persons. To date 2,284 missing persons have been reliably identified in Kosovo using DNA.

30. In Cyprus, the Committee on Missing Persons launched its forensic recovery and identification activities in 2005 with advice from ICRC and, later, practical and technical assistance from the International Commission on Missing Persons. It has since exhumed the remains of more than 600 individuals from different burial sites located across the island and has identified more than 200 persons whose remains have been returned to the bereaved families. The Committee has set up a local and bicommunal team of experts, including forensic archaeologists, anthropologists and geneticists. They have developed a model of best practices for the recovery and identification of the missing persons and attention to the families. This bicommunal project is also a model for peacebuilding efforts in the island.

31. With regard to missing persons, Greece has established a working group which cooperates with a related group in Cyprus to contact the relatives of the families of the missing. Regarding the identification of remains, cooperation has been also established with the Cyprus Genetics Institute as well as with the non-governmental organization Physicians for Human Rights.

32. In the Middle East, the ICRC-chaired Tripartite Commission, which was established in 1991 to resolve the fate of missing persons in connection with the 1990-1991 Gulf War, regularly meets and works on gravesites and on the identification of human remains. Since 2003, it has resolved 304 cases of missing persons. The International Commission on Missing Persons has been providing technical assistance to Kuwait, Lebanon and Iraq, where it also implements a large-scale capacity-building programme.

33. In 2009, in relation to the war between the Islamic Republic of Iran and Iraq, (1980-1988), further steps were taken to implement a joint memorandum of understanding signed by both Governments in 2008, with ICRC acting as a neutral intermediary. Agreement was reached on the rules and procedures of two tripartite committees that have the respective tasks of resolving: (a) cases of former and

presumed prisoners of war still unaccounted for; and (b) cases of persons missing or killed in combat, including the recovery, identification and handover of human remains.

34. In Colombia, two particular mechanisms are in charge of coordinating the efforts to provide answers to the families of missing persons on the fate and whereabouts of their relatives, as well as to repair them for their loss: The National Commission on Missing Persons and the National Commission on Reparation and Reconciliation.

35. In Timor-Leste, ICRC continues to advocate and offer support for the establishment of a national mechanism to address the issue of missing persons, as recommended by the 2008 report of the Commission for Truth and Friendship. An Act that aims to provide a general framework on missing persons (Comarca Act) was drafted in early 2010. ICRC which was invited to contribute to the preparation of the Act, insisted, in particular, on taking into account the needs, interests and concerns of the families of missing persons and the importance of assigning to the envisaged mechanism an exclusively humanitarian mission. Moreover, ICRC has started discussing the issue of the missing persons with the competent authorities in Indonesia.

36. In Nepal, major initiatives envisaged in the peace agreement and interim constitution, including the establishment of a truth and reconciliation commission and a commission on missing persons, have yet to take shape. The International Commission on Missing Persons has provided advice on policy measures in that regard.

C. Missing persons and archives

37. The proper management and processing of information about missing persons also require the establishment and maintenance of a proper filing and archiving system that complies with standards for keeping personal data confidential. In that respect, ICRC is managing information and processing files on missing persons in many of the areas in which it operates. A standard software application adaptable to all contexts allows it to store, process and consult information on missing persons while ensuring a high level of data security and confidentiality of information. Iraq and Bosnia and Herzegovina and other countries have been implementing large data management systems provided by the International Commission on Missing Persons, whose systems include large-scale DNA-based identification tools.

38. In 2005, ICRC, as chair of the Working Group on Missing Persons in Kosovo, negotiated access to the archives of the international organizations that had worked or are still working in Kosovo, particularly those that might possess documentation related to gravesite locations and exhumations carried out in Kosovo directly after the conflict. Formal requests have also been forwarded to the Governments of countries whose military contingents operated in Kosovo within the International Security Force in Kosovo (KFOR). All retrieved information is being carefully processed and analysed in accordance with ICRC working modalities, which are based on confidentiality, and in close cooperation with the relevant national entities, in hopes that it might lead to the identification of more human remains, including potential graves.

39. In 2001 and 2002, the International Commission on Missing Persons, through an agreement with the Government of Serbia, provided assistance in the excavation of the mortal remains of persons forcibly disappeared from the Kosovo conflict in 1999. The Commission used DNA to identify the victims, confirming that they were all Kosovo Albanians executed in 1999. These mortal remains were repatriated to the families of the missing by 2006. In addition, the Commission has provided assistance to the United Nations Interim Administration in Kosovo, and, more recently, to the European Union Rule of Law Mission in Kosovo, in identifying missing persons from the conflict. In total, 2,301 persons have been accurately identified. The process has come to a standstill, however, and the Commission believes that identifications made prior to the use of DNA constitute an issue that needs to be seriously addressed, since potentially hundreds of mortal remains may have been misidentified in Kosovo, prior to its use. The Commission plans to release a stocktaking report on the issue that is crucial to the future of the missing persons process in Kosovo. In addition to its technical work, the Commission helped the Government of Kosovo to create the Government Commission on Missing Persons in 2006 and is working with the Government to increase the capacity of the Commission to carry out its work. The Commission works closely with a variety of family associations of the missing from both communities to find avenues for dialogue and promote joint activities to raise awareness of the issue. In 2009, the Commission sponsored a workshop through the Nansen Dialogue Centre, to prepare for its second meeting between family associations and Government authorities to ensure that families receive regular information, in line with their rights.

IV. The forensic recovery and identification of remains of missing persons

40. The General Assembly, in its resolution 63/183, while acknowledging the role of traditional forensic methods in searching and identifying missing persons, recognized the significant contribution of technological progress, in particular that of DNA forensic sciences in the identification process of missing persons.

41. In cases where missing persons are believed to be dead, the recovery, identification and dignified management of their bodies or remains are essential. International humanitarian law and, particularly following the end of hostilities, human rights law, requires that States and other parties to an armed conflict or other form of armed violence ensure proper and dignified burial and commemoration of the dead and that they help clarify the fate of missing persons. With respect to the management of human remains and information relating to the dead, measures proposed include: ensuring that all feasible measures are taken to identify the human remains and to record their identity; avoiding obstruction of, interference with or impediments to the identification of human remains; issuing death certificates; ensuring that all those involved respect the legal rules and professional ethics applicable to the management, exhumation and identification of human remains; ensuring that forensic specialists, whenever possible, carry out the procedures to exhume and identify human remains and assess the most appropriate methods for doing so, taking into account standards that have been developed by the International Criminal Police Organization (INTERPOL), the International Commission on Missing Persons and competent professional and scientific organizations such as the European Network of Forensic Science Institutes;

respecting and developing professional ethics and standards of practice for forensic specialists working in international contexts; and ensuring adequate training for all persons collecting information on the dead and handling human remains.

42. With regard to beginning a process of exhumation and identification, experts agreed that such a process should begin only once a framework has been agreed upon by all those concerned and that the framework should include:

(a) The establishment of protocols for exhumation, ante-mortem data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and that have been previously adopted by the scientific community;

(b) Appropriate means of associating the communities and the families in the exhumation, autopsy and identification procedures;

(c) Procedures for handing over the human remains to the family.

43. The International Commission on Missing Persons has been making such protocols available, including standard operating procedures to numerous countries. Guatemala provided information about the functioning of the National Institute of Forensic Sciences, which is responsible for carrying out technical investigations.

44. Some organizations stated that in many parts of the world, forensic aspects of investigating human rights violations were still not included in the process. Although the technological gap in the area of forensics has narrowed over the past two decades in some regions, the credibility of official forensic institutions often continues to be an issue of concern. Updating equipment, providing training and ensuring quality control and assurance, as well as cooperation with specialized international organizations, are crucial for improving results and credibility of the concerned institutions, and addressing the needs of bereaved families.

45. While there have been some improvements in this area, it remains critically important, albeit extremely difficult, to ensure that independent forensic investigations are carried out or that independent experts accompany forensic officials investigating human rights violations. Forensic investigations conducted solely by potentially unreliable experts or institutions that may have a conflict of interest relating to the crime under investigation often do not provide closure to families of victims or to society as a whole, resulting in requests for further investigations.

46. With regard to measures aimed at facilitating the right to truth for the families of victims, forensic investigators should assist such families whenever possible by:

(a) Providing basic information before, during and after the forensic work is conducted, informing them of the many possible outcomes of any given forensic investigation (such as the likelihood of locating or identifying remains) and the final results;

(b) Facilitating appropriate access to sites where investigations are being carried out, keeping in mind that viewing burial sites is a traumatic experience and (considering that the identity of victims is not yet established) can give rise to false expectations and unnecessary sufferance;

(c) Considering and addressing their concerns, doubts, questions and objections, taking into account their cultural, religious and funeral customs. If such issues are not taken into account before a forensic investigation has begun, the work may fail and lead to more suffering; and

(d) Encouraging reflection, discussion and democratic decision-making regarding missing persons at the level of society as a whole, and doing so beyond documenting their plight, in order to prevent the marginalization of victims, including the families of the missing, which reinforces feelings of victimhood and hence creates further obstacles to reconciliation and peacebuilding. The International Commission on Missing Persons has implemented extensive small grants programmes for associations of the families of the missing, inter alia, to reach out to society at large. It has also sponsored analytical and artistic expression on the issue by local artists within affected societies.

47. The training and promotion of local forensic experts is also an important issue. While international forensic teams assisting in the search for the missing and the disappeared resulting from wars, internal conflicts and repressive regimes have made a major contribution, it is also important that they do not limit their interventions to forensic investigation and analysis but also emphasize working with, training and promoting local teams and local forensic experts. This is essential for a variety of reasons, including:

(a) In most of the countries concerned, the forensic work of identifying victims of violations takes decades; international teams tend to spend only a limited amount of time on each mission, usually only for a few years, whereas national teams can be dedicated to such work over a longer period of time;

(b) In many of the countries concerned, forensic science is less developed or almost non-existent and, in most cases, archaeological, anthropological and genetic techniques are uncommon or not used at all; the use of physical evidence in court is, in general, limited, and most testimony is oral; and the creation of a national forensic team or the training of forensic professionals who can address the problem usually leads to a general improvement in criminal investigation procedures and, as a result, in the exercise of the rule of law;

(c) Effective local forensic capacity, including specialized forensic teams, may serve the families of the victims and their communities in more effective ways because they speak the language, are from the same or a similar culture, have often lived through comparable experiences and often have a strong commitment to improving the rule of law in their countries — they are also better positioned for regional cooperation;

(d) Immediately after the 2003 international conference of governmental and non-governmental experts on the missing and their families, ICRC established its own forensic services in order to promote and help support the implementation of the recommendations from the Conference related to forensic sciences and human remains.

48. In this regard ICRC has been actively involved in supporting local forensic capacity-building to investigate and prevent the missing from armed conflicts and disasters in several countries worldwide, including: Argentina, Armenia, Azerbaijan, Colombia, Cyprus, Chile, Georgia, Guatemala, Haiti, India, Lebanon, Iran (Islamic Republic of), Iraq, Kenya, Pakistan, Peru, the Russian Federation, South Africa and

Yemen. ICRC's forensic support ranged from technical advice and tailored training to provision of equipment and promotion of national and regional communication, coordination and cooperation among forensic services for improved prevention and investigation into the missing from armed conflicts.

49. In this view, for example, several seminars on the forensic expertise have been arranged in the Russian Federation for the professionals involved in the process of searching and identification of missing persons. Officials and forensic experts have also conducted visits to the International Commission on Missing Persons for technical advice.

50. The International Commission on Missing Persons has been conducting extensive training programmes in the areas of locating missing persons, exhumation, archaeological and anthropological examinations as well as applying DNA methodology to identifications. Kuwait, Iraq and Colombia are among the countries that have participated in these programmes. The Russian Federation has also drawn on the Commission's expertise.

51. It is also important to train and promote local legal and judiciary experts, including lawyers and judges, including law students, to address the complexities of the missing persons issue under domestic law. Whereas the International Commission on Missing Persons works closely with the local judiciary, both for purposes of locating and identifying the missing and facilitating justice, this is not yet a universally accepted principle. More work needs to be done to ensure that rule of law-based processes can go forward.

V. Missing persons and the issue of impunity

52. The General Assembly, in its resolution 63/83 reaffirmed that armed conflicts are continuing in various parts of the world, often resulting in serious violations of international humanitarian law and human rights law, and that the issue of persons reported missing in connection with international armed conflicts, in particular those who are victims of serious violations of international humanitarian law and human rights law, continues to have a negative impact on efforts to put an end to those conflicts and causes suffering to the families of victims of missing persons, and stressed the need to address the issue of missing persons as a part of peacebuilding processes, with reference to all justice and rule of law mechanisms, on the basis of transparency, accountability and public involvement and participation

53. The General Assembly welcomed, in particular, the assistance that the International Commission on Missing Persons has been extending to the International Tribunal for the Former Yugoslavia in numerous cases, including those concerning the fall of Srebrenica in 1995.

54. The Human Rights Council has discussed the right to the truth on various occasions, although in a broader context. In its resolution 12/12 of 1 October 2009, the Council reaffirmed the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights. The Council noted that the right to the truth may be characterized differently in some legal systems as the right to know or the right to be informed or freedom of information.

55. In paragraph 11 of its resolution 63/183, the General Assembly stressed the need for addressing the issue of missing persons as part of peacebuilding processes, with reference to all justice and rule of law mechanisms, on the basis of transparency, accountability and public involvement and participation.

56. In the context of the peacekeeping operations in which the Spanish armed forces are currently participating, national contingents collaborate with States and intergovernmental and non-governmental organizations that request the support of the military in preventing the disappearance of persons during armed conflicts and in determining the whereabouts of persons reported missing. The Ministry of Defence supports the promotion and strengthening of the Peacebuilding Commission as a body that facilitates the smooth transition from a conflict to a peaceful situation. The question of missing persons should form part of peacebuilding agendas in view of its relevance for the restoration of justice and the rule of law.

57. The United Nations Office on Drugs and Crime, in the context of the fight against impunity and the strengthening of the rule of law, is working to assist Member States in reforming their criminal justice systems. Fair, humane and effective criminal justice systems, founded on full respect for the rule of law and human rights and guided by the United Nations standards and norms in crime prevention and criminal justice, are the basis on which the Office builds its response to threats emanating from drugs, organized crime, terrorism and corruption.

58. The United Nations Office on Drugs and Crime therefore assists States, particularly developing countries, countries emerging from conflict and countries with economies in transition, in developing strategies to prevent crime and to build the capacity of their justice systems to operate more effectively within the framework of the rule of law, with a particular attention to vulnerable groups. In countries emerging from conflict, the strengthening of the criminal justice system contributes to promoting public trust and ending impunity.

VI. Conclusions and recommendations

59. It is essential that States adopt measures to prevent persons from going missing, establish the right to know, develop forensic science capacity and counter impunity.

60. The problem of missing persons is particularly severe in the context of armed conflict and its aftermath. States should actively engage in a process to minimize the phenomenon, including by establishing adequate processes to locate, identify and repatriate the missing to their families. The issue should also be addressed as part of peacebuilding processes, with reference to all justice and rule of law mechanisms, including the judiciary, parliamentary commissions and truth-seeking mechanisms, on the basis of transparency, accountability and public involvement and participation.

61. The right of families to know the fate of missing persons should be respected at all times.

62. With regard to forensic sciences, there should be support for forensic work as a component of the investigation of human rights violations. Access to independent forensic investigations of violations of human rights and humanitarian law should

also be improved. Enhanced contacts should be established between independent forensic experts and local judiciaries, prosecutors, judges and lawyers. The need for training and promoting local teams and local forensic experts should also be recognized. Local forensic capacity-building is often essential for ensuring credible and sustainable investigations into cases of missing persons. In that context, regional initiatives could be helpful in improving independence and efficiency in the application of forensic sciences to the investigation of the missing.

63. It is essential that there be accountability for violations of human rights, including enforced disappearances. In that context, States are called upon to ratify relevant international treaties, in particular the International Convention for the Protection of All Persons from Enforced Disappearance. States are also called upon to bring their domestic laws and practices into conformity with that Convention.

64. International cooperation to locate, identify and repatriate persons missing as a result of violent conflict and human rights violations should be strengthened through organizations such as the International Commission on Missing Persons, which provide advanced technical assistance and policy frameworks responding to the obligations of Governments in this regard, and through associations of victims' families, such as the International Federation of Family Associations of Missing Persons from Armed Conflicts which is an international federation of the families of the missing from armed conflicts that works globally on behalf of the families to address and help to resolve the multi-faceted issues of missing persons and their surviving families post-conflict. These bodies have a major role to play in international cooperation on the issue of missing persons.